IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 331 of 2002(B)

OPMV.1883/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

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APPELLANT: PETITIONER IN OP(MV):

MR.GANGADHARAN, AGED 45 YEARS,
S/O. SRI.NARAYANAN, MADATHIL KOVILAKATH,
VARANAM POST, CHERTHALA.

BY ADV. SRI.T.K.RADHAKRISHNAN

RESPONDENTS: RESPONDENTS IN O.P(MV):

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1. MR.PARAMESWARAN, PRADEEP BHAVANAM,
CHARAMANGALAM, MAYITHARA POST, CHERTHALA.

2. THE UNITED INDIA INSURANCE CO.LTD.,
REPRESENTED BY ITS BRANCH MANAGER, CHERTHALA.

R2 BY ADV. SRI.P.M.M. NAJEEB KHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.331 of 2002

Dated, this the 8th day of October, 2007

JUDGMENT

The claimant in O.P.(MV) No.1883/1999 on the file of the Motor Accidents Claims Tribunal, Alappuzha is the appellant . Appellant sustained injuries in a motor vehicle accident. He filed Original Petition claiming compensation against the rider and insurer of the vehicle. Insurer did not contest. Owner alone contested. Tribunal found that the accident occurred due to the negligence of the appellant also and fixed the liability at 50:50. It was found that the normal compensation would have been Rs.44,250/-, but on account of the finding that the appellant was equally negligent he was awarded only Rs.22,125/- as compensation. Tribunal directed the insurer to deposit the amount. Complaining that the compensation awarded is inadequate the claimant himself has filed this appeal.

2. The only question arising for consideration in this appeal is whether the quantum of compensation awarded is reasonable. So far as the total compensation is concerned I do not find any reason to interfere with it. After finding that the normal compensation payable would have been Rs.44,250/- the Tribunal awarded only 50% of that amount on the ground that the appellant also contributed equally to the accident. Appellant was riding a bicycle and first respondent was riding a motor cycle. Materials on record show that the accident

occurred while the appellant was trying to cross the road. It is true that the accident occurred on the northern side of the road. But the respondents had no case that he did not see the cyclist because of curve in the road or flow of traffic. He had no case that any other vehicle was coming from the opposite side. The materials on record show that the appellant was almost crossed three fourth width of the road before the accident took place. Normally the first respondent motor cyclist could have very well seen the appellant crossing the road. Considering all aspects of the matter I am of the view that the percentage of negligence is to be refixed. The negligence contributed by the first respondent is refixed as 70% and that of the appellant as 30%. The compensation awarded by the Tribunal is also refixed as Rs.30,975/-.

In the result, appeal is allowed in part. A decree is passed in favour of the appellant to recover an additional compensation of Rs.8,850/- with 6% interest from the date of petition till the date of deposit. Second respondent insurer is directed to deposit that amount also. On deposit the appellant is entitled to withdraw that amount.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.331 of 2002

JUDGMENT

8th October, 2007.